Filed 11/10/09 P. v. Parham CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. RONALD JOSEPH PARHAM, Defendant and Appellant.	B213694 (Los Angeles County Super. Ct. No. KA083887)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mike Camacho, Judge. Affirmed.

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Sharlene A. Honnaka and Keith H. Borjon, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Ronald Joseph Parham was charged by information with one count of felony vandalism (Pen. Code, § 594, subd. (a)). The information also alleged that defendant suffered numerous prior serious or violent felony convictions within the meaning of the "Three Strikes" law (*id.*, §§ 667, subds. (b)-(i), 1170.12) and served one prior prison term (*id.*, § 667.5, subd. (b)).

The jury found defendant guilty of vandalism. Defendant's motion for a mistrial based on jury misconduct was denied. After the People elected to proceed as if this were a second strike case, defendant admitted one strike allegation and the prior prison term allegation. The remaining strike allegations were dismissed. Defendant's motion to strike the one prior serious or violent felony conviction he admitted was denied.

The trial court sentenced defendant to state prison for a total of seven years. Specifically, the court imposed the middle term of three years, doubled to six years under the "Three Strikes" law, and added one year for the prior prison term.

On appeal, defendant's sole contention is that jury misconduct requires reversal of his conviction. We conclude there is no merit to this contention and affirm the judgment.[1]

FACTUAL BACKGROUND

Prosecution

At approximately 9:40 p.m. on July 18, 2008, a person came into the Fast Strip gas station where Sunardi Louhenapessy (Louhenapessy) worked and told him that "someone broke your car." Louhenapessy went outside and saw that his car had a scratch to the

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[1] In his notice of appeal, defendant states that he is appealing from the order made after judgment. Inasmuch as no such order appears in the record on appeal, we construe defendant's appeal to have been taken from the judgment.

hood, dents on the rear, a dented bumper, a cracked front windshield, and a shattered rear windshield. Defendant was across the street walking.

Louhenapessy knew defendant as a regular customer who had been in the store two days earlier. Louhenapessy had never had a problem with defendant, but defendant's companions had tried to steal something from the store, and Louhenapessy had told them to leave.

Louhenapessy reviewed the store surveillance video and showed it to the police when they arrived to investigate. In reviewing the video, Louhenapessy could clearly see that defendant was the person who damaged his car.

Los Angeles County Sheriff's Deputy Jose Moreno responded to the vandalism call. He found defendant in the rear of a liquor store across the street, holding a beer. Deputy Moreno asked defendant if he had been involved in the vandalism and defendant responded: "I didn't do shit. Prove it."

Together Deputy Moreno and Louhenapessy watched the surveillance video feed recorded by one specific camera in full-screen mode. Upon doing so, Deputy Moreno was able to identify defendant as the vandal. He saw defendant pick up a brick and throw it on the rear of the car three times. Defendant then stepped away from the car, threw another brick at the front windshield and walked away.

After viewing the surveillance video, Deputy Moreno conducted a "field show up" and Louhenapessy identified defendant as the person he had seen walking across the street. Deputy Moreno arrested defendant and a few minutes later, defendant commented, "Yeah, I did it. I hate that f----- gook." Defendant also stated that he vandalized the car because Louhenapessy "doesn't let him go to the store and buy items."

Defense

Defendant testified on his own behalf and disputed the testimony of the prosecution's witnesses. He denied being at the gas station on July 18th. He denied ever being in a fight with Louhenapessy or knowing the kind of car he owned, and he indicated he did not throw any rocks or bricks at Louhenapessy's car. Defendant stated

that on July 18th, he was drinking a can of beer in the rear of the liquor store across the street from the gas station. He stated that he noticed patrol cars and a helicopter. He was arrested and placed in the back of a patrol car and told that he was being arrested for vandalism. He denied the statements attributed to him by Deputy Moreno.

DISCUSSION

Admitted into evidence during trial was a CD containing surveillance footage of the interior and exterior of the Fast Strip gas station on the night Louhenapessy's car was vandalized. When the CD was played for the jury during trial, video feed from 14 cameras was displayed simultaneously in a multi-screen format.

During deliberations, the jury asked to view the surveillance video. After some discussion, a laptop was given to the bailiff on which to play the CD containing the surveillance footage. With the bailiff present, one of the deliberating jurors had enough computer savvy to change the multi-screen view of all 14 cameras to a full-screen view of camera 11, thereby isolating and enlarging the images recorded by camera 11.

Defendant contends that the jury committed misconduct when it viewed the surveillance video during deliberations at a larger single-screen resolution, as opposed to the small multiple-screen resolution that was played for the jury during the trial.

After both sides viewed the surveillance video recorded by camera 11 in the enlarged full-screen mode, defense counsel moved for a mistrial, alleging that the jury had viewed evidence not presented in court and indicating that "in a way, we all look like fools." The prosecutor countered that the CD was admitted into evidence. The prosecutor argued that when comparing the two versions, "You see the same thing, a person walking around the victim's car. You really couldn't see the facial features but you could see definitely a person walking around the car."

The trial court denied the mistrial motion, explaining as follows: "My reasoning is simply this: through no fault of any side, there was no misconduct. There was no

deliberate violation of any type of *Brady*[2] material or information in light of the fact that the defense had the video disc that the People used and the People obviously would have introduced the larger screen had they known that it could have been accessed with that video disc. It was just through happenstance, if you will, that a juror was capable of creating that video screen from camera No. 11 in the jury room. They're basically using equipment that was provided to them in order to do so. So they really haven't considered any extrinsic evidence. They were just able to examine evidence more clearly by doing the enhancement. [¶] Although I agree, [defense counsel], that, in effect, you were, for lack of a better description, sandbagged in a sense that your argument may have been tailored differently had you known that the jurors would have had access to a clear depiction of the video. That's an issue which evidently may have to be addressed on appeal. [¶] For purposes of this jury and their continuing deliberations, I don't see any misconduct on either side or in the jury room, quite frankly, because they are examining evidence that was introduced as evidence in this case albeit in an enhanced way but, nonetheless, it's the same and identical evidence. [¶] That will be my ruling. Motion for a mistrial denied. The jury will be allowed to continue deliberations."

The trial court reasonably exercised its discretion in denying defendant's mistrial motion based upon jury misconduct. Whenever "a jury innocently considers evidence it was inadvertently given, there is no misconduct." (*People v. Cooper* (1991) 53 Cal.3d 771, 836.) The act of the jurors in the instant case is a far cry from "'true jur[or] misconduct'" as explained in *Cooper*. (*Id*. at p. 835.) In *Cooper*, the Supreme Court indicated that "'true jur[or] misconduct'" involves a situation where "a person violates his oath as a juror, [such that] doubt is cast on that person's ability to otherwise perform his duties." (*Id.* at pp. 835-836.) Jury misconduct cases "involve[] the improper receipt of *outside* information . . . rather[] [than] court officials furnish[ing] the jury with material that should not have been transmitted to them." (*People v. Nesler* (1997) 16 Cal.4th 561, 580, fn. omitted.)

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2 *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215].

There is no evidence that any juror violated his or her oath. The jury viewed the single-screen video after the court presented it to the jurors with the consent of both parties and with a bailiff present in the jury room. It is apparent that none of the parties knew that the video screen could be manipulated to switch between single-screen viewing and multiple-screen viewing. The trial court's finding of no jury misconduct was correct.

Assuming arguendo that the viewing of the enlarged video was misconduct, it was not prejudicial and did not require the granting of a mistrial. When a defendant makes a claim of jury misconduct, he has the burden of showing misconduct occurred. If he is able to do so, prejudice is presumed. (*People v. Marshall* (1990) 50 Cal.3d 907, 949.) The presumption may be rebutted if the prosecution affirmatively shows prejudice does not exist or if the court determines there has not been prejudice. (*People v. Cumpian* (1991) 1 Cal.App.4th 307, 312.)

Jury misconduct will be considered prejudicial if there is "'a substantial likelihood that the vote of one or more jurors was influenced by exposure to prejudicial matter relating to the defendant or to the case itself that was not part of the trial record on which the case was submitted to the jury.'" (*People v. Marshall*, *supra*, 50 Cal.3d at p. 950.) When assessing prejudice, the court must examine the entire record to determine whether there is a substantial likelihood that juror misconduct resulted in juror bias or other prejudice. (*In re Carpenter* (1995) 9 Cal.4th 634, 653; *People v. Cumpian*, *supra*, 1 Cal.App.4th at p. 312.) A substantial likelihood of prejudice will be found "if the extraneous material, judged objectively, is inherently and substantially likely to have influenced the juror" or if "the nature of the misconduct and the surrounding circumstances" indicate a substantial likelihood of actual prejudice. (*In re Carpenter*, *supra*, at p. 653; see *People v. Cumpian*, *supra*, at p. 312.)

While it is true during closing argument, defense counsel focused on the argument that defendant could not be identified from the video, there is no evidence before us that indicates that the defendant clearly can be identified from the enhanced video viewed by the jury while deliberating. Based upon this alone, there is not a substantial likelihood of actual prejudice had the jury not viewed the enhanced video.

Even without the video depiction that was seen by the jury during deliberations, the evidence against defendant was compelling. Deputy Moreno identified defendant as the individual who committed the vandalism based on viewing the original store single-screen video on the 19-inch computer screen as compared to the 15-inch screen used by the prosecutor during trial, which displayed 14 screens. The victim also identified defendant from the same video viewed by Deputy Moreno. After defendant was arrested, he admitted the vandalism and his strong dislike for the victim. Louhenapessy testified that two days before the vandalism, defendant was in the store with two other individuals who tried to steal from the store. The evidence was established without the use of the enhanced video viewed by the jurors. The prejudice required to grant a motion for mistrial was not shown.

DISPOSITION

The judgment is affirmed.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.